

APPEAL NO. 040211  
FILED MARCH 22, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 6, 2004. The hearing officer resolved the disputed issue by deciding that due to the respondent's (claimant) compensable injury of \_\_\_\_\_, the claimant had disability from November 14, 2002, through the date of the CCH. The appellant (carrier) appealed, contending that the hearing officer failed to apply the correct legal standard, that the claimant failed to prove a substantial change of condition, and that the hearing officer's decision is against the great weight of the evidence. The claimant asserts that the evidence supports the hearing officer's decision.

DECISION

Affirmed.

The claimant testified that he injured his neck and low back on \_\_\_\_\_, when he lifted and carried 80-pound bags of sand mix at work. Texas Workers' Compensation Commission Appeal No. 023101, decided January 30, 2003, affirmed another hearing officer's decision that the claimant sustained a compensable injury on \_\_\_\_\_, and that the claimant had disability from May 4 through July 1, 2001, but modified the prior hearing officer's decision by striking all language limiting the injury to a sprain/strain as surplusage.

The issue in the instant case was whether the claimant had disability resulting from an injury sustained on \_\_\_\_\_, after November 13, 2002, and if so, for what periods. The claimant had the burden to prove that he had disability as a result of his compensable injury of \_\_\_\_\_. Section 401.011(16) defines "disability" as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." It has been held that in workers' compensation cases, the issues of injury and disability may generally be established by the testimony of the claimant alone. Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. App.-Texarkana 1974, writ ref'd n.r.e.). Whether the claimant had disability for the time period in dispute was a fact question for the hearing officer to determine from the evidence presented. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We note that since the prior CCH that was held on November 13, 2002, there are new medical records which record, among other things, that the claimant's back pain is worse than it was before, that he has significant spasms of his lumbar paraspinal muscles, that he has severe disc injuries, and that a referral neurosurgeon is recommending lumbar spine surgery. In addition, the claimant's treating doctor has reported that the claimant's medical condition resulting from his compensable injury has prevented the claimant from returning to work, and the claimant

testified that he has not worked since November 13, 2002, because of the effects of his compensable injury. In light of the additional medical records presented at the CCH held on January 6, 2004, and the claimant's testimony, we cannot conclude that the hearing officer failed to apply a proper legal standard or that his decision is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS, SUITE 750, COMMODORE 1  
AUSTIN, TEXAS 78701.**

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Robert W. Potts  
Appeals Judge

CONCUR:

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Chris Cowan  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge